IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER E.S.I. NO. 6 OF 2006

EMPLOYEES STATE INSURANCE CORPORATION THROUGH ITS DEPUTY REGIONAL DIRECTOR, PANAJI GOA ....Appellant

Versus

M/S CHEMTECH INDUSTRIES PVT.LTD.,SALCETE GOA ....Respondent

Mrs. A. Agni, Advocate for the Appellant.
Mr. M. S. Bandodkar, Advocate For Respondent.

Coram:- SMT. RANJANA DESAI, J.

Date:- 16th June, 2006

P.C.:

Heard.

2. By the impugned order the Employees Insurance Court at Margao has allowed the application filed by the respondent herein under Section 75 of the Employees State Insurance Act, 1948 (hereinafter referred to as the said Act).

3. In short, it is the case of the respondent as stated in the application that manufacturing activity which is being carried out by them is without use of power and the respondent never employed more than 19 employees at any point of time. According to them on 17.11.98 the Insurance Inspector visited their establishment and submitted visit note to them. On the basis of the said visit note, the Regional Director without making inquiry, sent Form C-11 dated 21.12.98 stating that the establishment of the respondent was a factory and covered under Section 2(12) of the said Act. The Regional Director allotted a Code number to the establishment of the respondent. It is further the case of the

respondent that the respondent without knowing the provisions of the said Act, and believing that their establishment was covered under the provisions of the said Act, made an application to the Regional Director and submtted Form 0-1. Thereafter the respondent realised that as the respondent did not use power for manufacturing purpose and employed less than 19 employees, the respondent was not covered under the provisions of the said Act. The respondent therefore prayed that the Order dated 30.07.01 passed under Section 45-A of the said Act, Notice of recovery dated 23.9.02 and Show-Cause Notice dated 24.9.02 are bad in law and hence they may be set aside as the respondent-establishment is not covered under the provisions of the said Act. That application was granted and hence the present appeal.

4. I have heard learned counsel for the appellant. She drew my attention to Regulation 10B of the Employees' State Insurance (General) Regulations, 1950. She contended that under Regulation 10B(1)(b) it is the employer who is responsible for the correctness of all the particulars and information required for and furnished on the employer's registration form. She submitted that the respondent having filled in the Form, cannot now turn and state that their establishment is not using power and is not covered by the provisions of the said Act. The learned counsel also drew my attention to a document which is annexed to the petition which contains a list of machinery. She pointed out that the machinery included in the list necessarily requires electricity. The said list is on the letterhead of the respondent. Therefore it is evident that the respondent-establishment is using electricity.

5. I am unable to appreciate any of the contentions raised by the learned counsel for the appellant. The learned counsel for the respondent has submitted that this document which is placed on record is not exhibited. If that is so, no cognizance can be taken of this document. A perusal of the impugned order passed by the learned Judge shows that the first inspection report indicated that electricity was being used, but thereafter there are three reports of the Inspector which show that the

respondent is not using electricity in the establishment. Besides, the learned Judge has made a reference to the Order passed by the Judicial Magistrate F.C. in Labour Case No. 322/L/98/II in which the learned J.M.F.C. has stated that the entire work which was carried out by the respondent was manual and the number of employees was less than 20 and that the respondent was not using electricity. In view of this, in my opinion, no interference is called for with the impugned order. No substantial question of law is involved.

Hence rejected.

SMT. RANJANA DESAI, J.

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